Cultural Policy Hub at OCAD U

Innovation, Science, and Economic
Development Consultation on
Artificial Intelligence & Intellectual Property

CULTURAL **POLICY** HUB

ACKNOWLEDGEMENTS

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BACKGROUND

Artificial Intelligence (AI) is a topic that we are all grappling with, no matter where we work or in which medium we create. The recent proliferation of Generative AI tools has already begun to reshape the way we live and work, and we are seeing its potential applications across art, design, architecture, and new media practices. AI represents both an incredible opportunity for artists, but it also has the potential to disrupt the mechanisms and regulations that are in place to protect artists and the work they create.

This toolkit has been developed by the Cultural Policy Hub at OCAD University to prepare people working within or adjacent to the creative and cultural sector to respond to the upcoming Consultation on Copyright in the Age of Generative Artificial Intelligence through the Government of Canada's Innovation, Science, and Economic Development (ISED) department. The consultation provides the opportunity to engage with the Government of Canada on the ways in which AI is impacting your work or creative practice and to provide them with a perspective that they may not have heard. **This consultation is open to all Canadians to contribute their perspectives on AI until January 15, 2024.**

CLICK HERE TO ACCESS THE SURVEY

The government has outlined the purpose of this consultation as follows:

The Government is seeking to amend the copyright act in the interest of all Canadians to reflect and respond to the rapid rise of AI innovation and its implications for copyright and intellectual property for content creators, AI developers, and users of Generative AI tools. The consultation will focus on the implications of recent developments in AI on the creative industries and the economic impacts that these technologies have, or could have, on Canadians. It will look at whether change is required to further improve or reinforce copyright policy for a modern, evolving Canadian economy.

PURPOSE OF THE TOOLKIT

This consultation process provides the general public as well as practitioners from the tech and creative sectors an opportunity to weigh in on the benefits and risks that surround AI development and regulation in Canada.

As an entity with a keen interest in ensuring that cultural practitioners have access to opportunities to affect policymaking decisions at all levels of government, the Cultural Policy Hub is providing this toolkit to help creatives navigate and interpret the key issues

on which the survey seeks to gather the public's input and perspective. This is a critical opportunity for entrepreneurs, artists, researchers, academics, students, and other practitioners to share their perspectives and to balance out the dominant voices in this consultation, the loudest of which are those from the technology and AI development sectors.

Creatives bring a critical perspective to this debate. While some are concerned about how AI could eliminate the need for human intervention in their creative discipline, many others are excited about Generative Artificial Intelligence (GAI) and the ways it can enhance creativity. Wherever you find yourself in terms of your feelings about GAI as it relates to your practice, it is important to consider the potential legal, regulatory, and financial implications of how GAI could impact your work.

The purpose of this toolkit is therefore to provide the reader with an opportunity to:

1. Familiarize yourself with the ISED Consultation process
2. Give you an overview of the key questions being asked
3. Provide space for you to reflect upon your own positions on how AI impacts your professional practice and to anticipate how it could do so in the future
4. Give you pointers and advice about how best to make your case to the government.

The document is outlined in an easy-to-use format that guides the reader through the consultation topics and provides space for consideration of key questions. The final section includes information on approaches to submitting the consultation, as well as additional resources for review.

Reflection Point: Before going further, write down some initial thoughts on GAI and how it relates to your work. Are there any GAI tools that you currently use, or have heard about and are intrigued by? Do you have any initial thoughts on how you think it'll impact your work?

THE CONSULTATION IN SUMMARY

The Consultation seeks to engage Canadians around three key issues that bear on innovations and investments in AI and compensation for copyright owners in Canada in a way that balances support for innovation and investment in AI and other digital technologies. These three issues are:

- ***Text and Data Mining***
  - Whether any clarification is needed on how the copyright framework applies to the use of copyright-protected works and other subject matter in the training of AI systems.

- ***Authorship and Ownership of Works Generated by AI***
  - how the copyright framework should apply to AI-assisted and AI-generated works.

- ***Infringement and Liability Regarding AI***
  - who are the persons liable when AI-generated works infringe copyright-protected works.

In addition to these key issues, the consultation also invites perspectives from the public on the **technical aspects** of AI: how AI is being used by organizations and individuals in your field, and what risks or liabilities you perceive in its current applications.

To provide additional context around these key issues, the consultation paper includes a summary of feedback collected from a 2021 consultation on a copyright framework in the age of Artificial Intelligence, and offers existing approaches and precedents from other jurisdictions, namely the United States, Japan, Singapore, New Zealand, Switzerland, Ireland and the UK.

In the sections below, you will be invited to reflect on how each of these key policy issues affect your practice, and start outlining your position and potential responses to the questions being raised.

N.B. You do not need to prepare responses on all the listed policy issues. You can pick and choose which issues you wish to weigh in on based on your own experience and expertise.

1.0 TECHNICAL EVIDENCE

The written consultation begins with questions about your experience working with AI technologies.

Because most of these questions are primarily directed to individuals working within AI development, only a few may have broader relevance to people who use AI/AIA/AIG systems and content in their work or creative practice.

We have included those questions below. If you don't see how the apply to your work, skip ahead to the next page.

Questions for consideration:

- How do businesses and consumers use AI systems and AI-assisted and AI-generated content in your area of knowledge, work, or organization?
- In your area of knowledge or organization, what measures are taken to mitigate liability risks regarding AI-generated content infringing existing copyright protected works?

Reflection Point

2.0 TEXT AND DATA MINING (TDM)

This section explores the copyright implications of text and data mining for content creators, and the potential compensation owed for the use of this material in the development of AI. According to the Consultation Paper, "text and data mining consists of the reproduction and analysis of large quantities of data and information, including those extracted from copyright-protected content, to identify patterns and make predictions."

It begins by seeking evidence on whether TDM activities are being conducted in Canada and inquires about copyright frameworks around TDM. If your knowledge extends to current industry practices, include that in your notes.

For our purposes, the more pressing questions from the list below may be those focused on safeguards and remuneration standards for content creators whose work is used in TDM activities.

Selected questions for consideration:

- Are rights holders facing challenges in licensing their works for TDM activities? If so, what is the nature and extent of those challenges?
- If Government amended the Act to clarify the scope of permissible TDM activities, what should be its scope and safeguards? What would be the expected impact of such an exception on your industry and activities?
- Should there be any obligations on AI developers to keep records of or disclose what copyright-protected content was used in the training of AI systems?
- What level of remuneration would be appropriate for the use of a given work in TDM activities?

Reflection Point

3.0 AUTHORSHIP AND OWNERSHIP OF WORKS GENERATED BY AI

This section aims to clarify and demystify questions around the authorship and ownership of AI-generated or AI-assisted works. As GAI technologies continue to evolve and as their outputs are becoming more and more indistinguishable from those created by humans, debate has arisen over whether there is need to reconsider the definition of an author and more clearly define human intervention in GAI-created work in copyright legislation.

In contrast to the other sections of the consultation, the government has in this case asked participants to respond to three approaches to addressing uncertainty around authorship. The three approaches are:

- Clarify that copyright protection apply only to works created by humans.
- Attribute authorship on AI-generated works to the person who arranged for the work to be created.
- Create a new and unique set of rights for AI-generated works.

Questions for consideration:

- Is the uncertainty surrounding authorship or ownership of AI-assisted and AI-generated works and other subject matter impacting the development and adoption of AI technologies? If so, how?
- Should the government propose any clarification or modification of the copyright ownership and authorship regimes in light of AI-assisted or AI-generated works? If so, how?

Reflection Point

4.0 INFRINGEMENT AND LIABILITY REGARDING AI

The final section of the consultation questions the applicability of existing legal tests and parameters for determining whether copyright infringement occurs when copyrighted materials are used to train AI-generated or AI-assisted and/or the extent to which copyrighted material might be reproduced in the outputs of those same AI tools.

This section outlines the legal complexities and lack of clarity in determining liability where both humans and machines may be involved or held liable for infringement, both in training and reproduction. It acknowledges that few responses from the 2021 survey addressed this issue or offered prospective solutions—with many respondents citing the need for more information on how AI is used—and clarifies that few if any other countries have yet amended their own legislation to provide clarity on these issues.

Questions for consideration:

- Are there concerns about existing legal tests for demonstrating that an AI-generated work infringes copyright (e.g. AI-generated works including complete reproductions or a substantial part of the works that were used in TDM, licensed or otherwise)?
- What are the barriers to determining whether an AI system accessed or copied specific copyright-protected content when generating an infringing output?
- When commercialising AI applications, what measures are businesses taking to mitigate risks of liability for infringing AI-generated works?
- Should there be greater clarity on where liability lies when AI-generated works infringe existing copyright-protected works?

Reflection Point

5.0 OTHER TOPICS NOT COVERED IN THE CONSULTATION

While this consultation offers respondents a number of entry points to share their views on AI and intellectual property, it nevertheless restricts opportunities for them to highlight other important concerns or topics for consideration that may influence their approaches to and opinions on AI.

Given the absence of these other concerns from the consultation's framework, we encourage respondents to consider these topics (and others that may be important to you) and to think through how they might amplify your responses to each of the consultation's questions.

Below are a list of some of the topics that have not been addressed but that may deserve further consideration. This list is not comprehensive, and you are encouraged to reflect on other topics not addressed that may have bearing to your views on AI as it relates to your work or practice.

- Bias in datasets used to train AI and the perceived threat of increased bias if AI developers are restricted to using materials from the public domain for TDM and machine-learning
- The recognition of Indigenous sovereignty in the development, training, and application of AI and changes to copyright and intellectual property law
- The existing and future impacts on human rights in AI development and implementation
- The implications for education around ethical approaches to pedagogy in the age of GAI

If you feel that the framework is too limited and you wish to speak more directly to an issue not represented, ISED is welcoming comments on the consultation via email. We encourage you to share your feedback and any additional comments to this address:

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copyrightconsultations-consultationsdroitdauteur@ised-isde.gc.ca

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6.0 TIPS ON CRAFTING A PERSUASIVE SUBMISSION

Even in written form, speaking directly to government can be intimidating and requires a bit of strategy. In order to help prepare you in drafting and delivering your responses to the ISED Consultation survey, we have provided a list of tips and recommendations on how to make your submission as persuasive and impactful as possible.

1. **Key Points**
   o Identify a handful of key points or positions you want to put forth, and make sure they're represented in the final product.

2. **Be Brief**
   o ISED is accepting submissions from all Canadians. Be as concise as you can in your responses to ensure that your key messages don't get lost.

3. **Take a Holistic Approach to Statistics**
   o Be consistent in using data.

4. **Tell Your Story**
   o Your perspective is unique and your story is important. Don't be shy to bring that narrative to help frame your perspective.

5. **Provide Relevant Precedents Wherever You Can**
   o Government is looking for examples of precedents. If you have them, share them.

6. **Remain Non-Partisan**
   o Remaining non-partisan will help get your points across and will help ensure that your response will resonate with people across the political spectrum.

7. **Your Submission is Public**
   o Keep in mind committee submissions are generally public, so your brief could be found online. Even those that aren't posted publicly could be accessed by an Access To Information request.

8. **Follow Up**
   o As we stated above, if you feel the consultation did not cover all the topics you wanted to speak to, you can provide that as feedback as a written response to the email on the previous page.

9. **Amplify Your Response**
   o Share the survey link and let your network know you submitted a response. Getting more creative voices to weigh in on these important issues is critical to the sector's long-term sustainability and well-being.

RESOURCES AND FURTHER READING

The following list of resources was compiled in part by our colleagues at CARFAC during a recent Open Conversation around AI. We hope these resources will support further reading and research into the wide variety of concerns that are arising around Generative AI across the creative, tech, insurance, and educational sectors.

[Consultation Paper on Copyright in the Age of Generative Artificial Intelligence](#)
- The full consultation paper developed by the Government of Canada as part of the current consultation process around Generative Artificial Intelligence.

[Consultation Paper on a Modern Copyright Framework for Artificial Intelligence and the Internet of Things](#)
- The full consultation paper developed by the Government of Canada as part of a 2021 consultation process around Artificial Intelligence

[Knowing Machines](#)
- A research project tracing the histories, practices, and politics of how machine learning systems are trained to interpret the world, with excellent resources on GenAI.

[Intersection of AI & Copyright](#)
  - From the Copyright Clearance Center

[Rate of adoption and deployment of artificial intelligence (AI) in enterprise globally and in selected countries in 2022](#)
  - By Bergur Thormundsson, Statista

[Proposition de loi n°1630 - 16e législature](#)
  - Assemblée Nationale, France's tabled IP law

[PAC Beauty](#)
  - AR filter project by Heran Genene and Jeremy Bailey

[AI boom is dream and nightmare for workers in Global South](#),
  - by Rina Chandran, Adam Smith, Mariejo Ramos, Context, Thomson Reuters Foundation

[Pear, You and AI](#)
  - Art + AI Platform, coordinated by AI Impact Alliance. A women-led collaborative annotation initiative, designed as part of a larger project on Algorithmic Art to Counter Gender Bias in AI.

["Silicon Valley leaders think A.I. will one day fund free cash handouts. But experts aren't convinced"](#)
  - Sam Shead, CNBC
- See also: [Moore's Law for Everything](#), by Sam Altman

[Guide on the use of Generative AI](#)
  - Recommendations and policy considerations from Innovation, Science and Economic Development Canada, Government of Canada

[Canadian Guardrails for Generative AI – Code of Practice](#)
- o Innovation, Science and Economic Development Canada, Government of Canada

[Decrypting AIDA: the Artificial Intelligence and Data Act from an Arts and Cultural Perspective](#)
- By Valentine Goddard

[Art Impact AI, Observations and Strategic Recommendations](#)
- By Valentine Goddard

[Consumers Are Voicing Concerns About AI](#)
- By Simon Fondrie-Teitler and Amritha Jayanti, Federal Trade Commission

[Google to defend generative AI users from copyright claims](#)
- By Blake Brittain, Reuters

[If it wasn't created by a human artist, is it still art?](#)
- By Liz Mineo, the Harvard Gazette

[IAF's principles for Artificial Intelligence and Authorship](#)
- International Authors Forum

[Is Your AI Model Going Off the Rails? There May Be an Insurance Policy for That](#)
- By Belle Lin, The Wall Street Journal

[The Future of AI Insurance : An interview with Karthik Ramakrishnan, the CEO & Co- Founder of Armilla Assurance](#)
- The Leadership In Insurance Podcast

[OCAD U Generative AI Guidelines and Recommendations](#)
- OCAD University